

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

MAY 30, 2008
SALT LAKE CITY, UTAH

Present: President V. Lowry Snow and Commissioners: Nathan Alder, Steven R. Burt, Christian Clinger, May Kay Griffin, Rob L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, and Rodney G. Snow. Ex-Officio Members: Sharon M. Andersen, Simón Cantarero, Gus Chin, Eve Furse (Women Lawyers Representative), Paul T. Moxley and Stephanie W. Pugsley. Executive Director John C. Baldwin and General Counsel Katherine A. Fox. Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: Yvette D. Diaz. Ex-Officio Members: Hiram E. Chodosh, Laurie D. Gilliland, Charlotte L. Miller and Kevin Worthen.

Minutes:

NEW ITEM:

Lowry Snow introduced Simón Cantarero as the new Minority Bar representative.

NEW ITEM:

Relating to a recent Judicial Council meeting, Scott Sabey reported the Utah Supreme Court is currently accepting a roster of names for the Judicial Performance Evaluation Commission which was created by Senate Bill 105. Nate interjected that Chief Justice Durham has asked for the Bar's list of names and would like non-lawyers included as well. He asked Commissioners to e-mail him with nominations. Scott further reported that Gov. Huntsman has made changes to the Judicial Nominating Commission procedures and that the voter information pamphlet has been approved by the Judicial Council. Judge Sterling Stainsbury has been appointed as the 4th District Commissioner. He continued that the Administrative Office of the Court's Technology Committee recently held a presentation on e-filing and e-payments. However, the AOC does not want to be a service provider so the Bar may want to offer training on e-filing. (Most larger firms will have their own provider and the Court will sponsor a service provider for solos.) John said that the Bar is currently in discussions with a provider to offer this

service. Scott concluded his report by noting that the Council also approved a fee increase for certified court interpreters.

NEW ITEM:

Stephanie Pugsley said the YLD has not had an increase to the Bar's \$25,000 annual contribution in the last 15-20 years (membership in YLD is automatic so no dues are collected). Over the years, YLD has increased its sponsored projects but have decreased their travel expenditures. YLD would like a \$5,000 increase due, in part, to the "Wills for Heroes" project which has taken a large portion of their budget. Lowry said that YLD in many ways is the "face of the Bar", especially for young lawyers and the public. John said YLD has a \$20,000 surplus in the Bar's overall budget. **Nate moved to approved an additional \$5,000 to the Bar's annual contribution to YLD. Rod Snow seconded the motion which passed unanimously.**

1. PRESIDENT'S REPORT

1.1 Review Property Tax Appeal

Lowry described the Bar's property tax appeal which is designed to recapture approximately \$33,000 in back taxes and oppose future tax assessments for a portion of the building which should be (and has been in the past) considered exempt (see Tab 1). Because the Bar assumes regulatory activities that otherwise would burden government (i.e., the Utah Supreme Court) portions of the building should qualify for exemption. Our use of the building has not changed, only the title of ownership from a 501(c)(3) entity to a 501(c)(6) entity. In 1994, we disclosed change of ownership through a record of title transfer. Although we believe we have a good argument, John Baldwin said that he is not confident that the Salt Lake Board of Equalization will be very receptive to our appeal and if relief is granted, it will come at a later stage. Lowry said there are costs involved in filing the appeal. Much of the work, however, will be done by a Ray Quinney and Nebeker associate assisting Bruce Olsen. Katherine Fox noted the procedural complexities and frustrations with the steps involved to appeal and said that we are doing a significant amount of work here at the Bar to help offset costs.

1.2 Review Schedule for Tonight

Lowry reminded those in attendance of the Commission dinner tonight to be held at Café Trio. He also reminded everyone that we are hosting the Jackrabbit Bar Convention next week. Paul Moxley said that Connie Howard had done a terrific job planning the convention and forty-five people will be attending. There is a very good program planned.

1.3 Report on Meeting with Chief Justice Durham

Nate Alder, John Baldwin and Lowry met with Chief Justice Durham, Justice Durrant and Matty Branch to review the Commission's activity over the past year as well as

apprise the Court as to what is on the horizon. They specifically discussed the work on the long range plan strategy and operation/program reviews in which she expressed great interest.

They also discussed the new online lawyer referral service which should be up and running by July 1st. There are about 200 lawyers who have already shown interest and want to sign up. This service is particularly beneficial for lawyers in the rural areas in the state. Steve Owens said he would like to see a reduced fee agreement for those who sign up for the referral service to facilitate more affordable legal services. Nate responded that the program is still in the developmental stages and modifications will be made as we go along. For instance, we may need to mandate malpractice insurance for those wishing to participate. Lowry said that this program is a basic platform upon which we can build with possible opportunities to facilitate pro bono as we garner more information relating to practice areas. Lori Nelson asked if there is any way to track the usage and would like to see a comment box on the referral site. John responded favorably to Lori's suggestions. Lowry said that Lincoln is working on a Bar lobby kiosk station for the public to access attorney information. Herm inquired about the cost of implementation and wanted to know who would administer the service. Lowry said there are no costs associated with the attorney initially signing up. However, in the future an enhanced version providing other options may have a fee. John added that the directory will be administered by the Bar so no budget has been implemented on this yet and we are just absorbing the minimal costs at this point.

Felshaw King inquired about LegalMatch's reaction to our new referral service. John responded that we have "prepped" them along the way and we are currently talking about retaining LegalMatch as an alternative lawyer referral member benefit. Eve Furse said that Women Lawyer's goal in implementing their online directory was to include mentoring aspects and a resource for various practice areas. Their purpose went beyond mere lawyer referral and that perhaps the Bar would want to consider these additional benefits as well.

At the recent meeting, the Court was also informed of implementation of a whistleblower policy where anyone can directly approach the Court with concerns about the Bar consistent with Grant Thornton recommendations. Also discussed was the Mentoring Committee's work and Lowry said his impression was that the Court is pleased with that work. Justice Durham suggested holding a "pre-meeting" with all five justices to discuss the program and we will set an appointment after the Sun Valley meeting. In response to Felshaw's inquiry, John said that we will put an announcement in the Bar's e-bulletin when the mentoring program petition is filed. Nate said we are looking at May 2009 for implementation of the program. Matty said that at the meeting Bar representatives also informed the Court about Blomquist Hale.

1.4 Report on Meeting with Blomquist Hale

Lowry directed attention to the letter from Blomquist Hale (see Tab 2) which was sent after a meeting with them. He said at the recent meeting we were fairly candid about

expenditures versus benefits. The Blomquist Hale model is better equipped to work in corporate settings and our model is different which may account for the relatively low usage rates. We anticipated a 6-8% usage rate but we are closer to a 4-6% usage rate. The letter is an offer to modify the base charge usage but with no net savings. Rob Jeffs said based on the formula described in the letter, if utilization increases, it will cost more than originally contracted. Lori observed that \$190 per hour rate is at least double the normal rate, but John clarified that according to the report, we used 525 clinical hours so we are actually paying about \$70-90 per hour. John also said that we currently pay \$9,500 per month which is based on the number of active lawyers. Steve Owens said a flat fee with a high/low cap formula would be much better.

Rob said that it is important to remember that we were paying \$140,000 to Lawyers Helping Lawyers for less service. While he still believes in the concept of an EAP, he believes we are paying too much for the service we are receiving. John observed that Blomquist Hale has inherent overhead costs, e.g. the need to hire therapists whether or not they have a caseload and that some costs may be unavoidable. Lowry said the good news is that the utilization rates have increased but, the bad news is if we discontinue the program, people will be negatively affected. Rod Snow said that a Bar survey showed that only 50% of Bar members are satisfied with the service so he does not have a lot of confidence in Blomquist's data reflecting more satisfaction. Steve Owens said that on the Bar survey we did not disclose how much this was costing and opined that we need to include that cost in the next survey to obtain more accurate responses. Lowry said that we are thinking about an hourly rate for actual use rather than a flat amount and because we have already entered into negotiations, we need to resolve this aspect of the service soon.

Felshaw advised that we do not consider alternative providers at this point because we likely encounter the same issues. Steve Burt said we need to be careful with agreeing to an hourly rate because "you get what you pay for" and a low rate may not provide the best service. Rob, however, asserted that an hourly rate is best for several reasons: (1) it encourages more therapy for those getting assistance; and (2) it reduces the number of people Blomquist "pushes out" of program to outside providers. Lowry said that we'll draft a counter proposal with an hourly rate and if the proposal is not acceptable, we will follow up with Steven Owen's suggestion to put out RFP to other possible providers.

1.5 Paralegal Division Report

Sharon Anderson distributed several new handouts. She began her report by noting that the Division's goal is to mentor and educate new paralegals as well as teach lawyers how to use paralegals. The Division has really grown over the years and new developments include: (1) website changes at www.utahparalegals.org; (2) a website logo contest; (3) conducting a salary survey; (4) considering changes to the membership application form; (5) looking at approving online paralegal courses for ongoing membership requirements; and (6) many Division projects, e.g., clothing drive, Wills for Heroes and looking at hosting a clothing drive in the Fall for back-to-school children. She continued that the Division will be doing another CLE presentation at the Sun Valley meeting and will publish an article in the July/August issue of the *Bar Journal*. Sharon also noted that Julie

Erickson will be replacing her on the Commission. Rod asked that each Bar-related organization should give us a list of pro bono and service projects for press release purposes.

2. ACTION ITEMS

2.1 Final Report on Grant Thornton Governance Review

Lowry noted that the report is self-explanatory so he would not devote time to reiterating those items but asked that Commissioners please review it.

2.2 Final Report of Management/Technology Committee

Rob, Lowry, Lori and Steve Burt served on this Committee. They did not perceive the Committee's role to "micro manage" how John manages the staff but rather, a more general charge, e.g., look for problems, review program areas and departments. Rob reported that every staff member was interviewed about their work loads, projected needs and the like. We are very fortunate to have good employees and particularly, John. Rob also noted that Katherine is a significant resource for staff.

John currently has a system in place to provide for safe and efficient operation of the Bar including "hit by a bus" policy manuals for each staff member/department. His management style enhances morale, empowers staff and promotes enthusiasm. Rob noted, however, that there is vulnerability with both Lincoln's and John's positions. Despite the working knowledge of staff members of the operations performed by Lincoln and John, no one employee could perform all of those responsibilities/functions should a sudden or extended absence occur. A majority of other jurisdictions outsource their IT, but Lincoln performs a number of IT tasks in-house and uses non-custom security programs as much as possible to save money.

Because of our budgeting process and in order to meet budget, as attrition of staff occurs, John currently divides work responsibilities among existing staff members. Some areas, therefore, are lower priorities as demands increase and some tasks may not be getting done. Rob said that the Bar is probably understaffed or at least taxed at capacity. As more staff is added, the building facilities may become a larger issue and we may need to use current tenant space. Our budget has not anticipated costs associated with demands on the building. Scott interjected that we cannot hold the Bar Exam on site anymore and some section meetings are proving to be problematic due to attendance numbers. Lowry followed up on this point and said that in five to seven years, we may need to look seriously at accommodating Bar growth.

Staff wages were reviewed but comparisons were somewhat difficult; the Committee used the human resources job information for State of Utah. Some employees are paid higher than other similarly situated outside employees. There is not a lot of attrition due

to John's management style, however, and this has resulted in long term staff with regular pay increases which push their salaries up.

The report contains a number of recommendations. *Recommendation #1:* The Bar should adopt salary and wage guidelines for each staff position and a policy that those salary and wage guidelines not be exceeded without Commission approval. *Recommendation #2:* The Assistant Executive Director currently functions more like a department head and his job function should be expanded to assume some of the Executive Director's responsibilities. *Recommendation #3:* The Bar should consider accessing Paralegal Division members to participate in more pro bono activities and lawyer referral programs so that these programs do not impact the budget as significantly as otherwise might be the case. *Recommendation #4:* The Bar should request the Finance Committee review and make recommendations for increasing revenue to meet the needs of the expanding membership and services. The solution may inevitably come down to increasing licensing fees, increasing CLE costs and/or decreasing line item charges. Nate Alder added that we may need to increase admissions fees as well. *Recommendation #5:* Rob said the Executive Director's evaluation process was reviewed and we would benefit from a more formalized annual process, similar to the procedure used by the Idaho State Bar. We may choose to have the staff complete an evaluation of the Executive Director which could then serve as another tool for the Commission during the evaluation process.

Discussion ensued. Steve Burt observed that there is a wide range of operational and management controls in place. In addition to budget and staff issues needing to be addressed, the building problems will also increase since the building is now over 20 years old. Lori said she is surprised at the overall sense of staff being "stretched at the seams" and observed that we are maximizing our resources, including staffing. Steve Owens observed that the budget is currently in the black and suggested spending funds to add more staff, but Lori responded that we must look at funding staff as a more permanent solution rather than a year to year approach. In response to Simón's inquiry, John replied that most Bars outsource technology at double or triple the cost; Lincoln, however, "does it all". Stephanie Pugsley said YLD uses Lincoln and Brooke heavily and if we need more help, we should fund it. Lowry added that the increased load on technology and member benefits mandates additional resources as well. Rod said we need to continue cutting from the budget to increase available money for new staff. He continued that if we overload someone like John or Lincoln, we'll have serious attrition problems.

Eve Furse said that the pro bono position at Bar is critical, not just for the work but for public relations purposes. Towards that end, the Bar, she suggested, could serve as a central intake office and solicit the necessary funds to cover expenses from law firms. Steve Burt said in light of operational reserves and inflation, we need one year, not six months, of reserves and we need to think about this in terms of month expenditures, not an actual cost figure. In his opinion, we should seriously think about a dues increase to offset this need. **Lori moved to adopt the report, and have the Executive Committee work with John on recommendations, and further to ask the Budget and Finance**

Committee to review additional staff needs. Christian seconded the motion which passed unopposed.

2.3 Long Range Goals and Values Strategic Plan

Nate said he decided not to hold a retreat this year in order to save money and spend it in other ways. We will need to conduct five more operational reviews next year: OPC, Fee Arbitration, L & J Center, and others. We've devoted a significant amount of time on public relations, introducing a mentoring program, governmental relations and other areas. Accordingly, we need to compile a revised list of Commission priorities, expand it and vote via e-mail. (Nate and John will work on this.) Items to include as priorities are: (1) reviving the solo/small firm practice section; (2) senior lawyer programs/issues; (3) lawyer advertising; (4) ways to increase revenue by use of a sub-committee; and (5) Senate Bill 105. Nate then asked for input from others.

Lori suggested expanding Law Day and working with YLD. Gus interjected that Law Day is really "Law Week" due to state-wide activities lasting throughout the week. He suggested looking at solutions to the problem when a lawyer passes away and clients are left "high and dry". Scott would like to see more Bar involvement in e-filing from a service provider and educational perspective as the AOL is not conducting training in this area. Steve Owens agreed with expanding Law Day activities but added refinements the new lawyer referral directory and looking at adding group health insurance as a member benefit. Sharon Anderson suggested looking at solo practitioner issues. She said that the paralegals could conduct a presentation to show these lawyers how they can assist these types of practices. Mary Kay said the Budget and Finance Committee should look at establishing a sinking fund for future building repairs.

Rod suggested promoting the new mentoring program and begin with a Fall Forum presentation. He further believes addressing the issue of lawyer advertising should be a top priority. Matty said, however, that the Court's Rules of Professional Conduct Committee will not be interested in conducting a survey or making major changes until they believe this is a major concern with the Bar. Nate agreed that mentoring program awareness is a top priority. Stephanie said efforts should be concentrated on how to get younger lawyers involved in the mentoring programs. Discussion also ensued on how to best accomplish young lawyer involvement. Nate and John will present the priority list at the Sun Valley Convention for voting purposes.

2.4 Commission Priorities for 2008-2009 from Strategic Plan

Discussion combined with item 2.3

2.5 Mentoring Funding

Lowry said a final report on mentoring will be presented at the Sun Valley meeting. John said we need to figure out how the program can be funded. The program could be entirely self-supporting or partly subsidized from accumulated unreserved cash surplus,

contingency reserves or operations. The program could begin implementation (depending on Commission and Court approval schedule) either in spring 2009 (February Exam/May Admission) or at the latest, fall 2009 (July Exam/October Admission).

Projected expenses are as follows:

- \$ 30,000 New Salary (Full Time Administrative Assistant)
- \$ 12,000 New Additional Benefits, etc.
- \$ 10,000 New Program Expenses (software, phone, copies, etc.)
- \$ 14,000 Revenue Lost from CLE from 350 Mentors
- \$ 42,000 Revenue Lost from NLCLE from 400 New Lawyers
- \$ 5,000 Re-allocated Overhead
- \$ 27,000 Re-allocated Staff Expenses (JB, RD, CH, CA)

\$140,000 Total Program Costs with \$52,000 in total “New Dollars” and \$56,000 in total “Lost Dollars” and \$32,000 in total “Allocated Dollars”.

The \$300 per year charge covers all NLCLE at \$25/per hour. Lowry said other benefits in addition to NLCLE include educating new members about networking opportunities and the like. Gus asked if mentors will receive CLE credit and John replied affirmatively. **Steve Owens moved to adopted the funding proposal in lieu of the current NLCLE program. Herm seconded the motion which passed unopposed.**

2.6 LHL Funding Request

Lowry said that LHL has requested that their funding be increased by \$1,382 due to increased expenses for a total annual contribution of \$35,230. In response to Felshaw’s questions, John replied that LHL has been unable to solicit funds from foundations nor have they been successful in obtaining funds from other sources. Lowry said LHL is more willing to work with Blomquist Hale and they fill a role not met by Blomquist Hale with peer to peer contact. **Felshaw moved to support the funding request. Curtis Jensen seconded motion.** Lori said that she is somewhat confused about our policy on continued funding. Further discussion ensued. In response to Steve Owens’ questions, John responded that LHL received \$10,000 from Marsh Insurance. With Felshaw’s agreement, **Christian moved to amend the motion to include sending LHL a letter setting out the Bar’s expectations on seeking funding from grants and other sources. The motion then passed unopposed.**

2.7 UDR Funding Request

Lowry said that UDR is requesting \$20,000 in funding. He opined that this continued funding is directly related to our access to justice mission. John said the Bar also gives \$10,000 (in kind) as rent and provides UDR with technology assistance. He also pointed out that we fund UDR out of the prior year’s budget. **Steve Owens moved to approved funding as requested. Mary Kay seconded the motion. Christian abstained because he has a conflict because of his position as a court mediator. Motion passed unopposed.**

2.8 Adopt 2008-2009 Budget

John said we added 650 new lawyers this year, answered questions about to the budget and reported on the minutes of the Budget and Finance Committee. The Budget and Finance Committee approved the proposed budget. However, the proposed budget does not include new staff, lawyer fees for the property tax issue, or the mentoring program. The Budget and Finance Committee also recommended the following: (1) lawyers should be given the opportunity to opt out of receiving the *Bar Journal*; (2) Bar reserves need to be increased; and (3) Bar dues need to be raised. Lori asked if the Salt Lake County Bar could take over the TNB program but John and Nate both agreed that the Salt Lake County Bar “culture” is different than other county bars that sponsor identical programs. Rob, however, suggested discussing this issue with the Salt Lake County Bar and express our thoughts that they should help support the program. **Mary Kay moved to approve the proposed budget. Lori seconded the motion which passed unopposed.** John concluded this report by saying that overall, we are in a good financial position.

3. EXECUTIVE SESSION

Postponed.

4. CONSENT AGENDA

By policy, the April 25, 2008 minutes are approved without amendment (Tab 10).
By policy, the Fund for Client Protection requests for claim payments were approved (Tab 10).

MEETING ADJOURNED AT 1:10 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- (1) Paralegal Division Pamphlet
- (2) Copy of Paralegal Division PowerPoint Presentation
- (3) Guidelines for the Utilization of Paralegals